

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2865 – SB 3520

April 18, 2012

**SUMMARY OF AMENDMENT (016505):** Deletes all language after the enacting clause. Defines “nonviolent” as an offense that does not have as an element the use, attempted use, or threatened use of physical force; is not a felony offense that by its nature involves a substantial risk that physical force will be used; does not involve the use of a firearm; is not a sex offense that requires registration on the sex offender registry; and does not cause the victim(s) to sustain a loss of \$25,000 or more.

Effective July 1, 2012, authorizes a person to file for expungement of his or her public record involving a criminal offense, if at the time of filing, the person has never been convicted of any criminal offense, including federal offenses and offenses committed in other states other than a nonviolent offense during a single criminal episode for which the petition for expungement is filed; the conviction was not for driving under the influence of an intoxicant as prohibited in Tenn. Code Ann. § 55-10-401; the conviction was for a Class E felony or a misdemeanor; at the time of the filing, at least five years have elapsed since the completion of the sentence imposed for the offense; the person has never had a previous conviction expunged as the result of the successful completion of a diversion program pursuant to Tenn. Code Ann. §§ 40-15-102 through 40-15-106, or Tenn. Code Ann. § 40-35-313; and the person has fulfilled all requirements of the sentence imposed by the court. Establishes procedure for a person whose offense was committed prior to July 1, 2012, to file for expungement of his or her public record involving a criminal offense if the person’s offense was a nonviolent offense as defined in the proposed legislation, was committed on or after November 1, 1989, and the person was sentenced to three years or less, was sentenced to a determinate sentence of three years or less, or was sentenced to an indeterminate sentence for which the person served three years or less. Requires a person seeking expungement to petition the court in which the petitioner was convicted of the nonviolent offense for which the petition is filed. Upon filing, requires the clerk to serve it on the district attorney general (DAG) for that judicial district. Authorizes the DAG to submit recommendations to the court within 60 days after service of the petition. If the court denies the petition, the petitioner may not file another such petition until at least two years from the date of denial.

By September 1, 2012, requires the District Attorneys General Conference (DAGC) to create a simple form to allow a lay person to petition the court for expungement. Requires the DAG to prepare the petition and proposed order and provide it to the petitioner to be filed with the appropriate court clerk. Requires the petitioner to pay the court clerk a fee of \$350 upon filing of the petition. Of each fee, the court clerk will retain five percent or \$17.50; the Tennessee Bureau of Investigation (TBI) will receive \$50 to defray the costs incurred from the additional expungement petitions filed and granted; and the remaining \$282.50 will be deposited in the District Attorneys Fund to be used for law enforcement purposes, including but not limited to,

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the hiring of expert witnesses, training, matching federal grants directly related to prosecutorial duties, purchasing equipment and supplies, travel, and salaries and salary supplements for DAGC support staff.

Beginning July 1, 2013, requires the TBI to review the number of expungement petitions, the cost of processing each motion, and the amount of money paid in expungement fees to determine if the amount allotted to the Bureau is adequate, and if some portion of such funds could be used for other criminal justice purposes such as the Criminal Injuries Compensation Fund or drug court funding. Requires the Bureau to report its findings to the General Assembly in January 2014. Specifies that records expunged pursuant to the proposed legislation are to be confidential and can only be used to enhance a sentence if the petitioner is subsequently charged and convicted of another crime.

#### **CORRECTED FISCAL IMPACT OF ORIGINAL BILL:**

Increase State Expenditures - \$4,900/One-Time  
\$175,700/Recurring

#### **FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:**

**Increase State Revenue – Exceeds \$3,000,000/TBI**  
**Exceeds \$16,900,000/District Attorneys Fund**  
**Increase State Expenditures - \$4,900/One-Time/TBI**  
**\$175,700/Recurring/TBI**

**Increase Local Revenue – Exceeds \$1,000,000**  
**Increase Local Expenditures – Not Significant**

Assumptions applied to amendment:

- According to the TBI, there were 646,643 non-violent offenses reported in 2011.
- According to information provided by the Administrative Office of the Courts, in the state courts, there were 29,930 criminal counts disposed of as a conviction, guilty plea-as charged, or guilty plea-lesser charge and the offense was a misdemeanor or Class E felony during FY10-11. TBI assumes these 29,930 counts represent 25 percent of the total, excluding general sessions courts. Total counts, including general sessions courts, will result in 119,720 (29,930 x 4) additional expungement requests each year.
- Approximately 50 percent or 59,860 of the total offenders who will be eligible will pay the \$350 to have his or her record expunged resulting in an increase in revenue for state and local government.
- The court clerk will retain five percent or \$17.50 of each fee resulting in an increase in local revenue of at least \$1,047,550 (\$17.50 x 59,860 expungement requests). Any increase in workloads for the court clerks to collect the additional fee can be accommodated within existing resources.

- A total increase in state revenue of at least \$19,903,450 (\$332.50 x 59,860 expungement requests). Of the total revenue collected, TBI will receive at least \$2,993,000 (\$50 x 59,860 expungement requests) with the remaining \$16,910,450 (\$19,903,450 - \$2,993,000) going to the District Attorneys Fund.
- According to the TBI, the Bureau will eventually require a total of 11 additional data processing operator positions; however, at this time, the TBI is only requesting five additional data processing operator positions to process the additional requests. The Bureau will pursue the additional six positions through the Expansion Request process when ample revenue has been collected. Each data processing operator would process 50 requests per day or 11,000 per year.
- An increase in state expenditures of \$175,675 reflects the salary (\$23,900), benefits (\$9,475), and other related supplies (\$1,760) for five additional positions.
- A one-time increase in expenditures of \$4,900 reflects office supplies (\$980) for each position.
- According to the DAGC, any increase in caseloads as a result of the proposed legislation can be handled within its current staffing.

## **CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

/lsc